

ESTTA Tracking number: **ESTTA414576**

Filing date: **06/15/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Biomet Manufacturing Corp.
Granted to Date of previous extension	06/15/2011
Address	56 E. Bell Drive Warsaw, IN 46582 UNITED STATES
Attorney information	Geoffrey D. Aurini Harness, Dickey & Pierce, P.L.C. P.O. Box 828 Bloomfield Hills, MI 48303 UNITED STATES gaurini@hdp.com,tjcomparoni@hdp.com Phone:248 641 1600

### Applicant Information

Application No	79083976	Publication date	02/15/2011
Opposition Filing Date	06/15/2011	Opposition Period Ends	06/15/2011
International Registration No.	1042687	International Registration Date	03/23/2010
Applicant	VEOLIA WATER SOLUTIONS &; TECHNOLOGIES ITALIA S.R.L. Via Lampedusa, 13 MILANO ITALY		

### Goods/Services Affected by Opposition


Class 004. All goods and services in the class are opposed, namely: Biogas; biomass for use as fuels
Class 007. All goods and services in the class are opposed, namely: Machinery used in biogas systems, namely, mechanical handling apparatus in the nature of mechanical conveyor belts and transport belts, crushers, mechanical presses, mechanical electric pumps, electric motors for machines, and turbines other than for land vehicles, biogas generation systems consisting of the aforesaid apparatus; mechanical machinery and equipment for biogas systems and their parts and accessories, namely, pumps for machines and electric stirrers, and pneumatic transporters for the transportation of biomass
Class 011. All goods and services in the class are opposed, namely: Reactors for the production of biogas from organic waste, namely, fermentation and anaerobic reactors; water treatment equipment, namely, filtration, separation, chemical sterilization, drying, evaporation, and inverse osmosis units
Class 040.


All goods and services in the class are opposed, namely: Production and purification of biogas for others; fermentation of biomass and biological refuse to produce biogas; treatment of waste water

## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2301253	Application Date	04/10/1997
Registration Date	12/21/1999	Foreign Priority Date	NONE
Word Mark	BIOMET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 bone implants; orthopedic joint implants; and orthopedic surgical instruments, appliances and apparatus, namely, total and partial hip implants, knee implants, ankle implants, shoulder implants, bone plates and screws, cerclage cable and plates, elbow implants, wrist implants, bone pins, finger and toe joint implants, intramedullary nails and screws, compression hip screws, [ extermanl ] * EXTERNAL * fixation devices, slings, braces, splints, sterilization trays, and instrumentation for use and insertion of such devices in surgery and during recovery		

U.S. Registration No.	1153792	Application Date	04/07/1978
Registration Date	05/12/1981	Foreign Priority Date	NONE
Word Mark	BIOMET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 1978/01/20 First Use In Commerce: 1978/01/20		

	SURGICAL APPLIANCES AND INSTRUMENTS AND SURGICAL APPARATUS CONSISTING OF ORTHOPEDIC APPLIANCES AND INSTRUMENTS
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U.S. Registration No.	1411822	Application Date	02/28/1986
Registration Date	09/30/1986	Foreign Priority Date	NONE
Word Mark	BIOMET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1978/01/20 First Use In Commerce: 1978/01/20 CUSTOM DESIGN OF SURGICAL APPLIANCES AND INSTRUMENTS, ORTHOPEDIC DEVICES, AND ARTIFICIAL JOINTS AND IMPLANTS		

U.S. Registration No.	3176481	Application Date	08/31/2005
Registration Date	11/28/2006	Foreign Priority Date	NONE
Word Mark	BIOMET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/07/00 First Use In Commerce: 2005/07/00 Medical training and teaching offered via mobile bus transport; medical learning center services via mobile bus transport in the field of orthopedic medicine		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	BIOMET		
Goods/Services	Chemical compositions and antimicrobial coatings for use in the manufacture of medical products.		

Attachments	75282520#TMSN.gif ( 1 page )( bytes ) 73165517#TMSN.jpeg ( 1 page )( bytes ) 78703978#TMSN.jpeg ( 1 page )( bytes ) 79083976 BIOMET Opposition.pdf ( 6 pages )(42098 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/gda/
Name	Geoffrey D. Aurini
Date	06/15/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 79/083,976  
For the Mark: **BIOMET**  
Published in the February 15, 2011 Official Gazette

_____	)	
BIOMET MANUFACTURING CORP.	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	
VEOLIA WATER SOLUTIONS	)	
& TECHNOLOGIES, ITALIA S.R.L.	)	
Applicant.	)	
_____	)	

Commissioner for Trademarks  
ATTN: Trademark Trial and Appeal Board  
P.O. Box 1451  
Arlington, Virginia 22313-1451

**NOTICE OF OPPOSITION**

Biomet Manufacturing Corp. (Opposer), a corporation organized and existing under the laws of the State of Indiana, believes that it will be damaged by registration of the mark shown in Serial No. 79/083,976 and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Applicant seeks to register **BIOMET** in Standard Character form as a trademark for:  
Biogas; biomass for use as fuels, in International Class 4; Machinery used in biogas systems, namely, mechanical handling apparatus in the nature of mechanical conveyor belts and transport belts, crushers, mechanical presses, mechanical electric

pumps, electric motors for machines, and turbines other than for land vehicles, biogas generation systems consisting of the aforesaid apparatus; mechanical machinery and equipment for biogas systems and their parts and accessories, namely, pumps for machines and electric stirrers, and pneumatic transporters for the transportation of biomass, in International Class 7; Reactors for the production of biogas from organic waste, namely, fermentation and anaerobic reactors; water treatment equipment, namely, filtration, separation, chemical sterilization, drying, evaporation, and inverse osmosis units, in International Class 11; and Production and purification of biogas for others; fermentation of biomass and biological refuse to produce biogas; treatment of waste water, in International Class 40, as evidenced by the publication of said mark in the February 15, 2011 issue of the Official Gazette.

2. Opposer, for many years prior to the date of first use upon which Applicant relies, has adopted and continuously used the mark **BIOMET** and/or marks incorporating the mark **BIOMET** in connection with various goods and services, including medical products and services and chemical compositions for use in the manufacture and coating of medical products.
3. Opposer is the owner of various marks and registrations, including but not limited to the following: **Registration No. 2,301,253** for the mark **BIOMET** for use in connection with bone implants; orthopedic joint implants; and orthopedic surgical instruments, appliances and apparatus, namely, total and partial hip implants, knee implants, ankle implants, shoulder implants, bone plates and screws, cerclage cable and plates, elbow implants, wrist implants, bone pins, finger and toe joint implants, intramedullary nails and screws, compression hip screws, external fixation devices,

slings, braces, splints, sterilization trays, and instrumentation for use and insertion of such devices in surgery and during recovery; **Registration No. 1,153,792** for the mark **BIOMET & Design** for surgical appliances and instruments and surgical apparatus consisting of orthopedic appliances and instruments; **Registration No. 1,411,822** for **BIOMET** for custom design of surgical appliances and instruments, orthopedic devices, and artificial joints and implants, in International Class 42; and **Registration No. 3,176,481** for **BIOMET** for Medical training and teaching offered via mobile bus transport; medical learning center services via mobile bus transport in the field of orthopedic medicine, in International Class 41. These registrations are valid, subsisting, unrevoked, uncanceled and in the case of Registration Nos. 1,153,792, 1,411,822 and 2,301,253, incontestable.

4. In addition to the registered marks specified above, Opposer enjoys common law rights in the mark **BIOMET** for a variety of products and services, including chemical compositions and antimicrobial coatings for use in the manufacture of medical products.
5. As is readily apparent, there is no issue as to priority of use. Opposer's rights in U.S. Commerce originate at least as early as 1978 while Applicant's Standard Character trademark application was filed on March 23, 2010 under Section 66(a) of the Trademark Act with a Paris priority date of March 23, 2010.
6. Opposer has sold and advertised its goods and services under its marks throughout the United States. Opposer has developed exceedingly valuable goodwill in respect thereto.

7. By virtue of its efforts, and the expenditure of considerable sums for promotional activities, and by virtue of the excellence of its products and services, Opposer has gained for its above-identified intellectual property a most valuable reputation.
8. Notwithstanding Opposer's prior rights in and to its aforementioned marks, on March 23, 2010, Applicant filed a Standard Character trademark application for registration of the mark **BIOMET** for the goods in classes 4, 7, 11 and 40 as specified in the application herein opposed.
9. The mark proposed for registration by Applicant, namely **BIOMET**, is identical to and so nearly resembles Opposer's marks as to be likely confused therewith and mistakenly affiliated therewith. Applicant's mark is deceptively similar to Opposer's marks so as to cause confusion and lead to deception as to the origin of Applicant's goods bearing Applicant's mark.
10. If Applicant is permitted to register its alleged mark for its goods and services as specified in the Application herein opposed, confusion in trade resulting in damage and injury to Opposer is likely to be caused by reason of the similarity between Applicant's mark and Opposer's marks. The Opposer would be further damaged by the registration of Applicant's mark in classes 4, 7, 11 and 40 in that such registration would grant Applicant a prima facie exclusive right to the use of the alleged mark in connection with these goods and services with no restrictions as to channels of trade and would allow Applicant to trade on Opposer's existing goodwill in its **BIOMET** marks.
11. In addition, Opposer's **BIOMET** mark is famous and distinctive within the meaning of the Federal Dilution Act. Applicant adopted and began using the identical



**BIOMET** mark after Opposer's **BIOMET** mark became famous. The Opposer would therefore be further damaged by the registration of Applicant's mark in classes 4, 7, 11 and 40 in that such registration would dilute the capacity of Opposer's **BIOMET** mark to identify and distinguish its goods and services.

WHEREFORE, Opposer prays that the application Serial No. 79/083,976 be rejected, and that registration of the mark therein sought be denied.

Opposer hereby appoints LISABETH H. COAKLEY, Michigan Bar No. 34108, GEOFFREY D. AURINI, Michigan Bar No. 62187, and each principal, attorney of counsel, associate and employee of Harness, Dickey & Pierce, P.L.C. who is an attorney, its attorney with full power of substitution and revocation, to prosecute this opposition proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

Geoffrey D. Aurini  
Harness, Dickey & Pierce, P.L.C.  
P.O. Box 828,  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

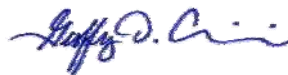
The amount of \$1,200.00 in payment of the requisite Opposition fee specified in 37 C.F.R. § 2.6(a)(17) has been authorized with the electronic filing of this Opposition. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayments to Deposit Account 08-0750.

Respectfully submitted,

HARNESS, DICKEY & PIERCE, P.L.C.  
Attorney for Opposer

Dated: June 15, 2011

By:



Lisabeth H. Coakley  
Michigan Bar No. 34108  
Geoffrey D. Aurini  
Michigan Bar No. 62187  
5445 Corporate Drive  
Troy, Michigan 48098

(248) 641-1600 (telephone)  
(248) 641-0270 (facsimile)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **Notice of Opposition** has been served on Applicant at the correspondence address of record with the United States Patent and Trademark Office as disclosed by the Trademark Applications and Registrations Retrieval (TARR) website by mailing said copy on June 15, 2011, via First Class Mail, postage prepaid to:

G. Roxanne Elings  
Greenberg Traurig, LLP  
200 Park Avenue  
New York NY 10166



Timothy J. Comparoni

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